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GERLING AMERICA INSURANCE COMPANY

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FIREMAN'S FUND INSURANCE
COMPANY, a foreign corporation a/s/o
BASIC RESOURCES, INC. and GEORGE
REED, INC., a foreign corporation,

Plaintiff,

vs.

GERLING AMERICA INSURANCE
COMPANY, a foreign corporation,

Defendant.

CASE NO.: 3:07-cv-06302-CRB

**DECLARATION OF THOMAS R. BEER
IN SUPPORT OF DEFENDANT
GERLING AMERICA INSURANCE
COMPANY'S MOTION FOR SUMMARY
JUDGMENT**

Date: August 8, 2008
Time: 10:00 AM
Courtroom: 8

I, Thomas R. Beer, hereby declare as follows:

1. I am an attorney licensed to practice in all the courts in the State of California and am a partner with Barger & Wolen LLP, attorneys for Defendant Gerling America Insurance Company. I make this declaration in support of Defendant Gerling's Motion for Summary Judgment. I have personal knowledge of the facts declared herein and if called upon to testify can and will testify competently thereto.

2. Attached hereto as Exhibit A is a true and correct copy of the written contract between Gencor Industries, Inc. and George Reed, Co. for the purchase of a 12,000 pound stationary asphalt plant, dated February 8, 2000.

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**DECLARATION OF THOMAS R. BEER IN SUPPORT OF
DEFENDANT GERLING'S MOTION FOR SUMMARY JUDGMENT
CASE NO.: 3:07-cv-06302-CRB**

1 3. Attached hereto as Exhibit B is a true and correct copy of the letter dated May 23, 2001
2 from counsel for Gerling to John Elliott of Gencor Industries, Inc. to inform Gencor that Gerling
3 was reserving its rights on its duty to defend and indemnify Gencor for the claims made by FFIC.

4 4. Attached hereto as Exhibit C is a true and correct copy of the letter dated May 14, 2007
5 from counsel for Gerling to counsel for Gencor Industries, Inc. to inform Gencor that Gerling was
6 declining coverage for the claims made by FFIC against Gencor.

7 I declare under penalty of perjury under the laws of the United States that the foregoing
8 statements are true and correct.

9 Executed on July 3, 2008 in San Francisco, California.

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11 /s/ Thomas R. Beer
12 THOMAS R. BEER
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